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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/630,959

07/30/2003

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YOR920030056US1(8728-607)

1793

46069 7590 11/25/2009
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EXAMINER

DAO, THUY CHAN

ART UNIT

PAPER NUMBER

2192

MAIL DATE

DELIVERY MODE

11/25/2009

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/630,959
Filing Date: July 30, 2003
Appellant(s): BERGMAN ET AL.

Nathaniel T. Wallace
For Appellant

EXAMINER'S ANSWER

This is in response to the Order Returning Undocketed Appeal to the examiner from BPAI on October 28, 2009, the appeal brief filed January 12, 2009 and the supplemental appeal brief filed February 26, 2009 appealing from the Office action mailed August 11, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct. Claims 20-29 are pending, stand rejected, and are under appeal. By the Amendment dated September 22, 2008, Claims 30-34 were canceled. This amendment was entered on October 14, 2008.

In the Examiner's Answer mailed on May 26, 2009, page 3, examiner mistakenly stated under the Grounds of Rejection that Claims 20-34 are rejected under 35 U.S.C. 102(e).

Accordingly, in the instant Supplemental Examiner's Answer, examiner:

- a) vacates the Examiner's Answer mailed May 26, 2009; and
- b) establishes a Supplemental Examiner's Answer with the correct claims 20-29 under the Grounds of Rejection.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7,000,187	Messinger et al.	02-2006
2004/0130572 A1	Bala	07-2004

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

☐ Claims 20-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Messinger (US Patent No. 7,000,187).

Claim 20:

Messinger discloses *a system for providing technical support, comprising:*

a client device comprising an application for monitoring and recording a procedure that is performed using said client device and generating an execution trace representing an instance of said procedure (e.g., FIG. 1, col.4: 58 – col.5: 51);

a procedure trace repository for storing execution traces (e.g., FIG. 2, Task List 43, col.5: 53 – col.6: 12; FIG. 5, block 100 and 82, a specific task include a list of steps, col.7: 1-38); and

a server processing a plurality of execution traces associated with instances of an executed procedure to generate a reusable executable procedure (e.g.,

FIG. 3A, a plurality of tasks (see Display Task List 62 as display a plurality of reusable executable procedures) comprises a plurality of steps (see Sequence Through Steps 66 as sequence through a plurality of execution traces), col.6: 13-24;

FIG. 8, New Task? YES 380 (processing and generating a new reusable executable procedure), Record New Task Sequence 385 (record a plurality of execution traces of the new executed task), Add New Task to Task List 390 (add a new reusable executable procedure to a procedure list), col.9: 38-65; and

FIG. 5, Display Task List 98 (display executable procedure list), Task Selected? YES 100, Replace Task With List of Steps 120 (replace said selected executable procedure by list of execution traces), Task Loop 140 (performing steps in said selected task as performing execution traces in the reusable executable procedure), col.6: 66 – col.7: 38;

FIGs. 9-12, col.9: 66 – col.11: 56, where an automated reusable executable procedure (Smurf Detection task 42b) can be performed and/or used through Steps 1-n by a user in a training session

wherein said procedure can be automatically performed on the client by invoking the reusable executable procedure (e.g., FIG. 2, within the GUI window 40a, Task List 43 includes a Smurf Detection Task button 42b to invoke the automatically performed Smurf Detection Task, col.5: 52 – col.6: 12).

Claim 21:

The rejection of claim 20 is incorporated. Messinger also discloses *a library for storing reusable executable procedures* (e.g., FIG. 1, Collector Databases 14a-14b, col.4: 58 – col.5: 38).

Claim 22:

The rejection of claim 20 is incorporated. Messinger also discloses the server distributes a reusable executable procedure to a client device comprising an execution engine for executing said reusable executable procedure (e.g., FIG. 3A, a plurality of tasks (see Display Task List 62 as display a plurality of reusable executable procedures) comprises a plurality of steps (see Sequence Through Steps 66 as sequence through a plurality of execution traces), col.6: 13-24).

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Claim 23:

The rejection of intervening claim 22 is incorporated. Messinger also discloses *said reusable executable procedure is executed for upgrading software residing on the client device* (e.g., col.9: 57-65; col.5: 65 – col.6: 3).

Claim 24:

The rejection of intervening claim 22 is incorporated. Messinger also discloses *said reusable executable procedure is executed for providing diagnostic support* (e.g., col.5: 65 – col.6: 3; col.2: 19-24).

Claim 25:

The rejection of intervening claim 22 is incorporated. Messinger also discloses *an execution engine of a client device comprises means for allowing a user to manually execute at least a portion of said reusable executable device and generating an execution trace representing said manual execution, wherein said execution trace representing said manual execution is processed by said server to augment said reusable executable procedure* (e.g., FIGs. 9-12, col.9: 66 – col.11: 56, where an automated reusable executable procedure (Smurf Detection task 42b) can be performed and/or used through Steps 1-n by a user in a training session).

Claim 26:

Messinger explicitly teaches *a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method steps for generating a reusable executable procedure, the method steps comprising:*

obtaining a plurality of execution traces (e.g., FIG. 8, blocks 380, 385 New Task? YES (obtaining a new reusable executable procedure), block 385 Record New Task Sequence (record new execution traces of the new reusable executed procedure), col.9: 37-65),

wherein each execution trace represents an execution instance of a procedure (e.g., FIG. 3A, Receive Selected Task? YES 64, Sequence Through Steps 66, steps as execution traces representing execution instances of said selected task; FIGs. 9-12, col.9: 66 – col.11: 56, where an automated reusable executable procedure (Smurf Detection task 42b) can be performed and/or used through Steps 1-n by a user in a training session);

processing said execution traces to create a reusable executable procedure associated with said procedure (e.g., FIG. 8, block 385 Record New Task Sequence (record new execution traces to create a new reusable executed procedure); FIGs. 9-12, Smurf Detection task 42b comprises Steps 1-n, col.10: 44 – col.11: 56);

wherein said procedure can be automatically performed by invoking the reusable executable procedure (e.g.,

FIG. 2, within the GUI window 40a, Task List 43 includes a Smurf Detection Task button 42b to invoke the Smurf Detection Task, col.5: 52 – col.6: 12; and

FIGs. 9-12, col.9: 66 – col.11: 56, where an automated reusable executable procedure (Smurf Detection task 42b) can be performed and/or used through Steps 1-n by a user in a training session).

Claim 27:

The rejection of claim 26 is incorporated. Messinger also discloses *obtaining an execution trace comprise instructions for monitoring and recording a sequence of actions that are performed by an individual when executing an instance of said procedure (e.g., FIG. 8, New Task? YES 380 (processing and generating a new reusable executable procedure), Record New Task Sequence 385 (record a plurality of execution traces of the new executed task), Add New Task to Task List 390 (add a new reusable executable procedure to a procedure list), col.9: 38-65).*

Claim 28:

The rejection of claim 26 is incorporated. Messinger also discloses *processing said execution traces comprise instructions for performing the steps of: aligning said execution traces to identify corresponding steps between said execution traces; and generalizing said aligned execution traces to generate said reusable executable procedure* (e.g., FIG. 5, Display Task List 98 (display executable procedure list), Task Selected? YES 100, Replace Task With List of Steps 120 (replace said selected executable procedure by list of execution traces), Task Loop 140 (performing steps in said selected task as performing execution traces in the reusable executable procedure), col.6: 66 – col.7: 38).

Claim 29:

The rejection of claim 26 is incorporated. Messinger also discloses *performing the step of augmenting said reusable executable procedure using an execution trace that is obtained during execution of said reusable executable procedure* (e.g., FIG. 3A, a plurality of tasks (see Display Task List 62 as display a plurality of reusable executable procedures) comprises a plurality of steps (see Sequence Through Steps 66 as sequence through a plurality of execution traces), col.6: 13-24; FIGs. 9-12, col.9: 66 – col.11: 56, where an automated reusable executable procedure (Smurf Detection task 42b) can be performed and/or used through Steps 1-n by a user in a training session).

□ Claims 20 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Bala (US Patent Publication No. 2004/0130572 A1).

Claim 20:

Bala discloses *a system for providing technical support, comprising:*
a client device comprising an application for monitoring and recording a procedure that is performed using said client device and generating an execution trace representing an instance of said procedure (e.g., [0040-0041]);

a procedure trace repository for storing execution traces (e.g., FIG. 4, block 410, aligning said steps in a specific task such as “Edit the path variable”, [0056]; blocks 422-476, a selected task has associated steps aligned in said task, [0057-0058]); and

a server processing a plurality of execution traces associated with instances of an executed procedure to generate a reusable executable procedure (e.g., FIG. 1, [0048-0049], a server connected to LAN 171 and/or WAN 173;

FIG. 6, [0074-0079], Use (Active Content Wizard) ACW Authoring Tool to Create ACW Script 650 (a server for processing/creating a reusable executable procedure), Store the Steps Contained in a Format Readable by the ACW Interpreter 680 (a server for storing the execution traces associated with said procedure);

FIG. 4, [0056-0060], User Selects Task 410 (select a reusable executable procedure), Is the System in Step by Step Mode? YES 464 (is the system in trace by trace mode), Execute Step Using ACW Interpreter Module 452 (execute said plurality of execution traces)

wherein said procedure can be automatically performed on the client by invoking the reusable executable procedure (e.g., FIG. 4, blocks 410 and 422, [0056-0057]; FIG. 5A-J, task “Edit the path variable” is executed by system 200, [0059]).

Claim 26:

Per the plain language of claim 26, Bala explicitly teaches *a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method steps for generating a reusable executable procedure, the method steps comprising:*

obtaining a plurality of execution traces, wherein each execution trace represents an execution instance of a procedure (e.g.,

FIG. 6, Use (Active Content Wizard) ACW Authoring Tool to Create ACW Script 650 (create a reusable executable procedure), Store the Steps Contained

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in a Format Readable by the ACW Interpreter 680 (store the execution traces associated with said reusable executable procedure);

FIG. 4, Execute Step Using ACW Interpreter Module 452, Are There Additional Steps to Execute? 458, steps to execute as a plurality of execution traces, [0058]);

processing said execution traces to create a reusable executable procedure associated with said procedure (e.g.,

FIG. 6 as above, Use (Active Content Wizard) ACW Authoring Tool to Create ACW Script 650 (create a reusable executable procedure), Store the Steps Contained in a Format Readable by the ACW Interpreter 680 (store the execution traces associated with said reusable executable procedure);

FIG. 4, User Selects Task 410 (select a reusable executable procedure), Is the System in Step by Step Mode? YES 464 (is the system in trace by trace mode), Execute Step Using ACW Interpreter Module 452),

wherein said procedure can be automatically performed by invoking the reusable executable procedure (e.g., FIG. 4, blocks 410, 422, 464 , [0056-0057]; FIG. 5A-J, task "Edit the path variable" is executed by system 200, [0059]).

(10) Response to Argument

A. The Claim Rejections Under 35 U.S.C. 102

i. Claim 20

i(a) Claim 20 stands rejected as being anticipated by Messinger (US Patent No. 7,000,187) (Brief, pages 4-5).

The limitations at issue “*a server for processing said execution trace and said stored execution traces to generate said reusable executable procedure*” (claim 20, lines 7-8 and Brief, page 5).

The examiner respectfully disagrees with Appellants’ assertions.

Messinger explicitly teaches an on-line coach as “*a server*”, wherein said on-line coaches includes users login via the network with required password and network administrators to administrate said on-line coach (FIG. 13C, col.12: 28-41, Login 442, Logout 444, Change Password 446; and further in FIG. 1, users 10a-10b may login on-line coach 20 via Network 16).

Collector Control				
View	Collector	Level	User-Privilege	
432		Beginner	Login	442
434		Intermediate	Logout	444
436		Advanced	Change Password	446

FIG. 13C

Messinger also teaches:

“*a reusable executable procedure*” (e.g.,

FIG. 3A, block 62, Display Task List → block 64, Receive Selected Task? YES (each task is stored, retrievable, and executable as “*a reusable executable procedure*”, emphasis added);

FIG. 3A, block 66, Sequence Through Steps (each step as “*an execution trace*”);

FIG. 2, tasks 42a-e (tasks as “*reusable executable procedures*”), open an executable task file “Spam Prevention” (learn how to prevent spam), or another executable task file “Smurf Detection”, i.e., executable/reusable tasks, emphasis added;

FIG. 9-12, details of the executable task file “Smurf Detection”, learning how to detect a smurf (a ping packet with a forged source address), which includes sequence of steps 1-n, “*execution traces*” as claimed);

“*processing said execution trace and said stored execution traces to generate said reusable executable procedure*” (e.g., with a specific task such as “Spam Prevention” or “Smurf Detection”, the on-line coach may retrieve a saved/stored task with level “beginning” or “advanced” (processing stored execution traces) and add steps (such as adding steps to the task with level “beginning”) or delete steps (such as deleting steps from the task with level “advanced”), i.e., processing an execution trace, to generate a task with level “intermediate”:

“The “level” menu item 430 includes a “beginner” indicator 432, an “intermediate” indicator 434, and an “advanced” indicator 436, collectively 438. The terms, beginner, intermediate, and advanced correspond to a level of “coaching” the user wishes to receive from the present invention. In one embodiment, for example, less detailed information is displayed in the information box 410c (FIG. 9) when the user selects the beginner level 432, whereas more detailed information is displayed in the information box 410c when the user selects the advanced level 436. Furthermore, in the beginner level 432, fewer task indicator buttons 42 are displayed in the task list 43 than for the advanced level 436.” (FIG. 13C, col.12: 15-27, emphasis added);

wherein said generated intermediate-level task (“Spam Prevention” or “Smurf Detection”) is reusable/

executable (FIG. 2, Task List 43 with executable files 42a-d, FIG. 13C, level section).

The limitations at issue “*said procedure can be automatically performed on the client by invoking the reusable executable procedure*” (Brief, page 5, last paragraph).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *automatic as not requiring prompted user action*, emphasis added) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The plain language of the claims merely recites “*said procedure can be automatically performed on the client by invoking the reusable executable procedure*”.

Per the plain language of the claims, Messinger explicitly teaches after selecting/invoking a specific executable task file (either "Spam Prevention" or "Smurf Detection" in FIG. 2), said task enters/starts a Task Loop (FIG. 6B), i.e., “*automatically performed on the client by invoking*” as claimed (emphasis added).

i(b) Claim 20 stands rejected as being anticipated by Bala (US Patent Publication No. 2004/0130572) (Brief, page 6).

The limitations at issue “*a server for processing said execution traces and said stored execution traces to generate said reusable executable procedure, wherein said procedure can be automatically performed on the client by invoking the reusable executable procedure.*” (Brief, page 6).

The examiner respectfully disagrees with Appellants' assertions. Bala explicitly teaches:

“a server” (e.g., [0048],

“The computer 110 may operate in a networked environment using logical connections to one or more remote computers, such as a remote computer 180. The remote computer 180 may be a personal computer, a hand-held device, a server, a router, a network PC, a peer device or other common network node, and typically includes many or all of the elements described above relative to the computer 110. The logical connections depicted in FIG. 1 include a local area network (LAN) 171 and a wide area network (WAN) 173, but may also include other networks. Such networking environments are commonplace in offices, enterprise-wide computer networks, intranets and the Internet.” (emphasis added)

“*execution traces*” (e.g., atomic steps, script, and description in a natural language as “execution traces” of a specific procedure, emphasis added, as Bala also discloses:

“The present invention can be implemented to include a wide variety of features. In one embodiment a User interface in accordance with the invention takes customers through a series of atomic steps to perform a task”, [0024];

“ACW interpreter 230 is a computer program configured to execute the atomic steps for the task selected by the user”, [0054], i.e., task is stored/saved and reusable;

“The script contains a description of the task in a natural language such as English, as well as information that is required by the interpreter to either teach a user how to perform this task or to do it for them. Further, the tool allows for editing the natural language description by the author.” – emphasis added;

“for processing said execution traces and said stored execution traces to generate said reusable executable procedure”, (e.g.,

“The script contains a description of the task in a natural language such as English, as well as information that is required by the interpreter to either teach a user how to perform this task or to do it for them. Further, the tool allows for editing the natural language description by the author.” (e.g., retrieve a stored task (processing “stored execution traces”), and edit the natural language description (modifying/processing “execution traces”), and saving the edited task, i.e., to create/generate “reusable executable procedure”;

wherein said edited/generated task is reusable and executable, e.g., FIG. 4, block 410 “User Selects Task”, i.e., reusable, and block 452-458 executing step and checking “Are there additional steps to execute?”, i.e., executable, emphasis added).

“wherein said procedure can be automatically performed on the client by invoking the reusable executable procedure”

“The set of screen shots in FIGS. 5A-5J show the ACW Interpreter 230 executing the series of atomic steps required to complete the task “Edit the path variable”. The interpreter 230 executes each step and only pauses when user input is required” (e.g., [0060], executing a task to show a user how to edit a path variable in Windows.TM. and further in [0031]);

FIG. 2, Task Database 220 (reusable tasks);

FIG. 4, block 410 “User Selects Task”, i.e., reusable, and block 452 executing step and block 458, checking “Are there additional steps to execute?”, i.e., executable, emphasis added).

ii. Claim 26

ii(a) Claim 26 stands rejected as being anticipated by Messinger (Brief, pages 7-8).

The limitations at issue "*obtaining a plurality of execution traces, wherein each execution trace represents an execution instance of a procedure; and processing said execution traces to create a reusable executable procedure associated with said procedure*" (Brief, page 7).

The examiner respectfully disagrees with Appellants' assertions.

Messinger explicitly teaches:

"*obtaining a plurality of execution traces*" (e.g., FIG. 8, block 385 "Record New Task Sequence", wherein a task is a sequence of steps as in FIG. 3A, i.e., sequence of steps as "*a plurality of execution traces*", emphasis added)

"*wherein each execution trace represents an execution instance of a procedure*" (e.g., each step as "*procedure*" such as "Fill in this Box..." in FIG. 9, "Select the middle radio button" in FIG. 11); and

"*processing said execution traces to create a reusable executable procedure associated with said procedure*" (e.g., FIG. 8, block 385 "Record New Task Sequence" → block 390 "Add New Task to Task List"; FIG. 2, Task List 43 with executable files 42a-d, creating/storing/retrieving executable task file "Spam Prevention" or "Smurf Detection").

ii(b) Claim 26 stands rejected as being anticipated by Bala (Brief, page 8).

The limitations at issue "*obtaining a plurality of execution traces, wherein each execution trace represents an execution instance of a procedure; and processing said execution traces to create a reusable executable procedure associated with said procedure*" (Brief, page 8).

The examiner respectfully disagrees with Appellants' assertions.

Bala explicitly teaches:

“obtaining a plurality of execution traces wherein each execution trace represents an execution instance of a procedure” (e.g.,

“The present invention can be implemented to include a wide variety of features. In one embodiment a User interface in accordance with the invention takes customers through a series of atomic steps to perform a task” (e.g., [0024], a series of atomic steps as “a plurality of execution traces”);

“ACW interpreter 230 is a computer program configured to execute the atomic steps for the task selected by the user” (e.g., [0054], each series of atomic steps as “a instance of a procedure” such as “Click the System icon” [0064], “Click on the Path icon” [0068], click the “OK” button 572 [0072]); and

“processing said execution traces to create a reusable executable procedure associated with said procedure” (e.g.,

“The set of screen shots in FIGS. 5A-5J show the ACW Interpreter 230 executing the series of atomic steps required to complete the task "Edit the path variable". The interpreter 230 executes each step and only pauses when user input is required” (e.g., [0060], creating/storing/retrieving a task to show a user how to edit a path variable in Windows.TM. and further in [0031]); and

FIG. 4, block 410 “User Selects Task”, i.e., reusable, and block 452-458 executing step and checking “Are there additional steps to execute?”, i.e., executable, emphasis added).

iii. Claims 21-25 and 27-29 (Brief, page 9)

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Claims 21-25 and 17-29 are also rejected based on virtue of their dependencies on the rejected base claims 20 and 26, respectively.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejection should be sustained.
Respectfully submitted,
/Twee Dao/
Examiner, Art Unit 2192

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